IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

Mat.Appeal.No. 297 of 2006()
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OP.88/2002 of FAMILY COURT, KOTTAYAM
.....

PETITIONER: APPELLANT:
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RIJU SARA SAMUEL, AGED 26 YEARS,
D/O.SAMUEL MATHAI, RESIDING AT
AMBAZHATHUMOOTTIL, ROSHI VILLA,
PUTHENPEEDIKA, OMALLOOR P.O.,
PATHANAMTHITTA.

BY ADV. SRI.TITUS MANI VETTOM
SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS:
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GIGY KURIAN, AGED 33 YEARS,
S/O.P.C. KURIAN, PATTATHANATHU HOUSE,
CHENGALAM SOUTH P.O., CHENGALAM VILLAGE,
KOTTAYAM TALUK.

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 04/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**KURIAN JOSEPH & A.K. BASHEER, JJ.**

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**Mat. Appeal NO.297 OF 2006**

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**DATED THIS THE 4th DAY OF JANUARY, 2007.**

**JUDGMENT**

Kurian Joseph, J.

This appeal is directed against the order dated 17.8.2006 in O.P.No.88/2002 on the file of the Family Court, Kottayam. Appellant is the wife. Though notice was served on the respondent/husband, there is no appearance.

2. Respondent filed the original petition seeking restitution of conjugal rights. According to the appellant, she had left the matrimonial home as early as 8.9.2001, since she was unable to bear the cruel treatment on the part of the respondent and his relatives. It is submitted that proceedings under Section 498-A of the Indian Penal Code are also pending between the parties. Still further, it is submitted that O.P.No.458/2004 filed by the appellant herein seeking divorce is pending before the Family Court, Thiruvalla.

3. In the above facts and circumstances, there is no point in ordering restitution of conjugal rights at this distance of time, particularly since a divorce petition is pending before the Family Court, Thiruvalla.

Accordingly, we allow the appeal. The order dated 17.8.2006 in O.P.No.88/2002 on the file of the Family Court, Kottayam is set aside. It is made clear that we have not considered the matter on the merit of the allegations raised

in the appeal and the judgment is rendered only due to the pendency of the divorce petition filed by the appellant.

**(Kurian Joseph, Judge.)**

**(A.K. Basheer, Judge.)**

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